

BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2011-317-WS

IN RE: Application of Kiawah Island Utility, )  
Incorporated for Adjustment of Rates )  
and Charges )  
\_\_\_\_\_ )

**KIAWAH ISLAND UTILITY, INC'S  
RETURN TO MOTION TO  
KPOG'S MOTION TO COMPEL**

Kiawah Island Utility, Inc. ("KIU" or the "Utility") makes this return in response to the Motion to Compel of Kiawah Island Property Owners Group ("KPOG").

KPOG's Motion to Compel should not be granted for reasons that include, but are not limited to, the following:

1. The regulations governing procedures before the Public Service Commission of South Carolina (the "Commission") do not authorize the motion. R103-829 specifies, in part that "Motions, except those made during hearings, will be reduced to writing and filed with the Chief Clerk at least ten (10) days prior to the commencement of a hearing. . . . " KPOG's motion was not made more than ten days prior to the hearing nor at the hearing.
2. Pursuant to S.C. Code of Regulations R. 103-833 (B). "Unless under special circumstances and for good cause shown, written interrogatories shall not be served less than 10 days prior to the date assigned for commencement of hearing." The Notice of Hearing was issued by the PSC Clerk's office on August 15, 2011, scheduling the hearing for November 30, 2011. The Commission conducted its hearing in this matter on November 30, 2011. The Commission closed the record except for one or two supplemental items upon

which it requested clarification, neither of which involved responses to KPOG's Second Interrogatories. Since KPOG's written Second Interrogatories were served fewer than ten days before the scheduled hearing and Commission made no determination of good cause allowing a shorter response time than provided in R 103-833 (B), KIU objects on the basis the discovery was untimely and beyond the scope of permissible discovery under R. 103-833.

3. The information sought by KPOG in its Second Interrogatories is irrelevant to the proceedings in this application and the interrogatories are overly burdensome and vexatious.
4. The discovery request is now moot. The hearing concluded on November 30, 2011, and the record of the proceedings was not left open to receive responses to KPOG's Second Interrogatories.
5. KPOG waived any alleged right to compel responses to its untimely interrogatories by failing to take appropriate steps before or at the hearing.
6. Contrary to KPOG's assertions, KIU did note its objection to the relevancy of matters KPOG sought to introduce for years prior to the test year, including KIU's questioning of the relevance of the numerous documents compiled as hearing Exhibit No. 3. Although KIU consented to the introduction of most of them, KIU specifically asserted their lack of relevance.

In addition to these general objections, KIU makes the following specific objections to the following Interrogatories repeated in KPOG's Motion to Compel dated January 13, 2012.

1. Please provide for the 1) Holding Pond property, 2) Down Island storage facility and 3) Cougar Island utility tract property the following:
  - a. The initial fair market value upon which each lease amount was based.
  - b. Copies of each of the lease agreements.
  - c. The basis for determining the first year's lease amount for each property.
  - d. The annual amount of lease payments paid for each year from inception to the point of purchase by KIU.
  - e. The total amount collected through the lease agreement prior to KIU's acquisition of each property.

KIU's further objection : The test year for KIU's application is 2010. The leases for the Holding Pond and Down Island Storage tracts were terminated before the test year. No lease payments are included in the test year. Additionally, this information for properties identified as (1) and (2) was provided to KPOG in the prior rate proceeding ten years ago. KIU never leased the parcel identified as (3).

2. Please provide KRA's rationale for pursuing leasing the property to KIU as opposed to selling the property to KIU at the inception of the date of the lease.

KIU's further objection: The requested information is irrelevant to the test year of 2010. Additionally, the Supreme Court of South Carolina in KPOG's prior appeals upheld the Commission's determination in prior rate proceedings to recognize all or a portion of the lease payments. Further, witness Heyboer testified at the hearing (subject to cross examination by KPOG's lawyer) to the reasons for KIU's entering the leases for the properties identified as parcels (1) and (2).

3. Please explain the basis for determining each year's lease amount. (i.e. the percentage increase factor) and if this differs from the Consumer Price Index explain why.



KIU's further objection: The test year for this rate proceeding is 2010. No lease payments were paid during the test year. Lease payments for prior years are irrelevant. Each year's lease amount was determined by the terms of the lease.

4. Please provide the fair market value at the time of the sale for the properties listed below and the price KRA sold them to KIU.
  - a. Title to Real Estate- Down Island Storage Facility Tract dated 10/10/2008
  - b. Title to Real Estate- General Warranty dated 04/24/2009
  - c. Title to Real Estate- Cougar Island Utility Tract 11/02/2010

KIU's further objection: Witness Heyboer testified to the basis for the determination of the purchase price for all three tracts. The purchase price was based on appraisals that determined the fair market value.

5. How did KRA determine the selling price in 2008 of \$1,360,000 for the Down-Island storage property, in 2009 of \$1,800,000 for the Holding Pond property, and in 2010 of \$2,000,000 for the Cougar Island tract?
  - a. Please provide all documentation supporting these amounts.
  - b. Please provide copies of documents from the Public Service Commission authorizing all of these transactions, as required by Rule 103-743.

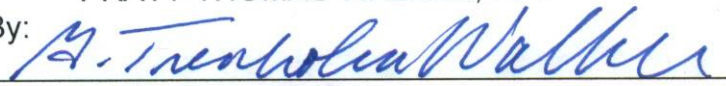
KIU's further objection: Witness Heyboer testified to the use of appraisals for determination of the fair market value of these three properties at the time of their respective purchases by KIU. As stated in the testimony at the hearing, KIU did not obtain the prior approval of the Commission for these fair market value transactions that enhance the ability of KIU to serve its customers for the reasons stated by witness Heyboer.

For the foregoing reasons, KIU respectfully requests that the Commission deny KIU's untimely, unauthorized Motion to Compel responses to its untimely interrogatories that seek information irrelevant to the test year and to the issues before the Commission in this rate proceeding.

Respectfully submitted

PRATT-THOMAS WALKER, P.A.

By:



G. Trenholm Walker

P.O. Drawer 22247

Charleston, S.C. 29403-2247

T: (843) 727-2208

F: (843) 727-2231

gtw@p-tw.com

ATTORNEYS FOR APPLICANT KIAWAH ISLAND  
UTILITY, INC.

Charleston, South Carolina

January 16, 2012